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In The
SUPREME COURT OF THE UNITED STATES

Fall Term - 1965
No. 432

John V. Holmes, et al Petitioners

vs.

Jay Eddy, et al, Respondents, No. 9511

United States of America ,,
Respondents, No. 9543

PETITION FOR REHEARING

John V. Holmes, pro se
Durward E. Willis, pro se
Hydramotive Corporation
Hydramotive Manufacturing Corp.
Solo Tire Company, et al

Address for Petitioners:

Love Valley
North Carolina 28677

IN THE SUPREME COURT OF
THE UNITED STATES
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Citations of Cases	Pages
Greenwell vs. U.S., 336 F2d962	3
Holmes, et al vs. Cary, 234 F.S. 23, ___ F2d ___ (No. 22098, 5Cir	7
(Holmes vs. Eddy, and	1, 4
(Holmes vs. U.S., CCH 91,346, 341,F2d 477	1, 2, 3 4, 5, 6,
Holmes vs. U.S., 231 FS 971, ___ F2d ___, No. 22052, 5th Cir.	4, 5, 7
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Sherwood vs. U.S. CCH FSLR 91,419	3
U.S. vs. Parrott, No. 830-64, USDC-DC, 12/6/'65, to be rep. ___F.S.___, CCHFSLR___	1, 2, 3, 5, 6, 7.

In The
SUPREME COURT OF THE UNITED STATES
October Term - 1965
No. 432

PETITION FOR REHEARING

Petitioners present their petition for a rehearing of this Court's Order dated October 25, 1965, denying the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit and, in support thereof, respectfully show:

GROUNDS FOR REHEARING

Petitioners believe a supervening conflict of decisions has been created by the opinion of the United States District Court, District of Columbia, in U.S. vs. Parrott, et al, No. 830-64, (Judge Gasch, decided 12/6/'65), to be reported, __F.S.__, CCH F.S.L.R. _____(with appendix A, B, C), final order 12/10/'65, successful plea in bar, case noticed for direct appeal to the Supreme Court of the United States on 1/5/'66. Petitioners herein Holmes and Willis were defendants therein, the Hydramotive Corporation named a "co-conspirator" therein, and all other petitioners have property interests in the issues at stake.

The additional and contradictory findings of U.S. vs. Parrott, supra, have apparently raised the following Constitutional questions, regarding Holmes vs. U.S., et al, 4thCir., No. 9543, CCH SLR (d.c.) 91,346, F2d 341 at 477, contrary to the findings of the Fourth Circuit. (Note 1)

1. Were the petitioners Constitutional rights violated by an unlawful U.S. agents search and seizure of their property, that is, auto and tire plans?

Note 1: Holmes vs. Eddy held SEC and SEC informers immune from law in circulating "harmful falsehood, having, admittedly, no basis in fact".

2. Were the petitioners Constitutional rights, Fifth Amendment, not to be deprived of ... property, (auto and tire plans), "without due process of law" violated by U.S. agents?

3. Were the petitioners Constitutional Sixth Amendment rights, to counsel of choice, violated by U.S. agents, resulting in unlawful taking of property without due process of law?

4. Did U.S. agents damage petitioners through negligent acts as alleged in the No. 9543 complaint?

5. Whether, in view of the supervening law of U.S. vs. Parrott, supra, the petitioners have Constitutional rights at law to suppress and to recover their property, that is, all copies of their auto and tire plans?

6. If petitioners Constitutional rights have been violated by a pattern of U.S. agents conduct, and if U.S. agents have been guilty of negligent acts, are the petitioners entitled to Tort Claims Act damages and judicial restraint of U.S. agents as a matter of law?

In U.S. vs. Parrott, supra, it was held, during the period covered by the No. 9543 complaint and action, that U.S. agents engaged in "purposeful and / or oppressive" (Pollard vs. U.S., 352 U.S. 354) negligent delays while engaged in violation of petitioners direct and indirect property and civil interests and Constitutional rights.

In the Parrott case it was held: ".. it is not necessary to reach the search and seizure issues under the Fourth Amendment, the due process issues under the Fifth Amendment, or the Sixth Amendment speedy trial issues. Were it necessary to reach these constitutional questions, the result would be the same for these defendants have been denied substantial constitutional rights guaranteed under these Amendments. (emphasis added).

In No. 9543, Holmes vs. U.S., et al, the petitioners alleged violation of their Constitutional rights: (j) (jurisdiction) Constitution of the United States, Article III, Sec. 2(4Cir. appendix record,

CCH F.S.I.R. 91,419.

pg. 3, No. 9543) and Amendments 4 and 5 (4Cir. app. rec. pg. 14).

At issue in No 9543 are two sets of auto and tire plans. The first set of plans was taken from the petitioner Willis in Sept. 1961 by SEC; see 4th Cir. app. rec. pg. 5, item IX. In relation to this set of plans, U.S. vs. Parrott, supra, has held:

"SEC... obtained records and papers in the possession of ... Willis."

Further...

"It appears that ... Willis produced such papers and records on threat of having them subpoenaed. They were uncounseled at this time. The absence of counsel militates against any conclusion that they might have waived their constitutional rights. Greenwell v. United States ____ U.S. App. D. C. ___, 336 F. 2d 962, 968.

The second set of auto and tire plans was taken by SEC agents in June 1963, after they had secured a court order. (See note 2 below). As petitioner Holmes stated, affidavit, No. 9543, 4Cir., app. pg. 19-20 (para. 5, 6, 7:

"5. At no time has any party of interest affirmatively agreed to or consented, ... to the public expose of any confidential Hydramotive automobile or Solo tire designs and drawings."

"6. It is true, that, in response to a court order, which the court in question had indicated in advance it was inclined to grant, Durward E. Willis, (and no other) mailed certain drawings to the Commission in June of 1963.

Note 2: Actually the 2nd set of plans was produced after 2 (two) court orders and threatening letter from SEC. The court, in granting the order, did not, of course, know, that the U.S. was "lying in wait" with "oppressive and purposeful" "negligent" delay as found in Parrott. See U.S. vs. Sherwood, "It is not in keeping with our heritage to destroy the image of America, by a policy of lying in wait..." "The United States of America has sufficient power, prestige and facilities to openly indict...." CCH F.S.L.R. 91,419.

"

"7. These drawings, or at least certain of them, were introduced by the Securities and Exchange Commission in a federal court action. Plaintiffs herein, Holmes and Willis, then moved, following this action, to have the drawings sealed, to be opened only upon showing of good cause, on the order of the court, in conformity with certain patent and process legal decisions. This motion has been pending for some time."

The SEC then (Fall 1963) attempted to take the second (or court) set of drawings from the Okla. Court and make them a part of a public record. As said in No. 9543, affidavit, pg. 20, 4Cir. appendix:

"8. Following use of the Hydramotive and Solo drawings as exhibits in that case, the defendant herein (SEC) requested of that court use of all exhibits in an administrative proceeding in Washington, D. C., which would become a public record. The Okla. Court then allowed the Commission use of certain exhibits but specifically refused to allow Hydramotive or Solo drawings, specifications or patent material to leave the care of the Court. (See Ex. A-Order of Judge Fred Daugherty, attached hereto)(orig. record)."

On March 16, 1964, Judge Fred Daugherty, U.S.D.C.-W.D.-Okla. signed an order sealing the second (or court) set of plans. (See Order of Judge Daugherty, attached as appendix A to this petition for rehearing).

Before and after the injunction trial of July 15-20, 1963, the petitioners Holmes and Willis were without counsel. (Note 3).

Note 3: Willis, Holmes and other petitioners were denied their 12/13/'61 counsel through the intimidation efforts of defendants Rae and Hyman of SEC, see pg. 15-18 of 35 pg. complaint in record of Holmes vs. U.S. 231 FS 971, aff. ____ F2d ____, never denied by SEC. Petitioners believe their rights in Holmes vs. Eddy were prejudiced by '61 SEC counsel denial, threats and intimidations.

In view of the circumstances, the court in U.S. vs. Parrott, found prejudice in counsel lack:

"Willis and Holmes testified fully as adverse Government witnesses."

"Defendants Willis and Holmes appeared and testified without benefit of counsel"

Meanwhile, in November, 1963, the defendant SEC counsel David B. Bliss was engaged in a fraud and deceit upon the petitioners, see U.S. vs. Parrott:

"In connection with these same proceedings, a more significant action on the part of the Government is noteworthy. The SEC attorney (Bliss) denied that criminal proceedings had been instituted against any of the persons involved." Also, see Note 8, Parrott, Appendix B, to be reported by CCH F.S.L.R. at _____.

Judge Daugherty, petitioners have been informed, has never given anyone permission to open the sealed plans. Nor has the U.S. Court of Appeals, Tenth Circuit, signed any order allowing the court sealed plans to be opened.

However, in Fall of 1965, petitioners did discover that the ordered sealed court set of plans has been secured in some fashion (not lawful subpoena) by the defendants here Bliss and Hyman, SEC counsel, and one Barnes, a U.S. agent (for identification see footnote 7, U.S. vs. Parrott, and there appendix A, to be reported, CCH FSLR _____. participation in deceit).

Upon discovery of violation of the court order by defendants and one Barnes, petitioners moved for contempt in Hydramotive Mfg. Corp., et al vs. SEC, 10th Cir., No. 7977, appealed from SEC vs. Bond and Share, et al 229 F.S. 88. The interesting Bond and Share action, begun 12/13/'61, well-used by by SEC and U.S. as alleged "precedent", has bogged down completely to the prejudice of petitioners-here, defendants therein, due to court reporter administrative breakdown, see 10th Cir. opinion, cited in next paragraph.

In argument on Nov. 22, 1965, the Tenth Circuit indicated the contempt motion might better be heard in the district court and/or was premature to receipt of the appeal-in-chief, when and if the record is completed. In opinion of 1/3/'66, No. 7977, to be reported, ___ F2d ___, CCH FSLR at _____, the Tenth Circuit said:

> "..... denied as premature. The motion of the appellants Willis and Holmes relating to the disclosure of asserted confidential information by appellee through use of exhibits introduced at the trial of this action are denied for the same reason." (emphasis added, last 2 pages of 5 page opinion).

The petitioners urge that, as a matter of law, in view of the findings of U.S. vs. Parrott, they are entitled to suppress and recover their property, that is, both (1961 and 1963 taken) sets of automobile and tire plans, which application of law would quiet this dispute.

In No. 9543, Holmes vs. U.S., (4thCir.), the petitioners asked damages from the U.S. for the negligence of agents. See 9543 4thCir. appendix record pg. 2, "negligent acts" -- pg. 6 "negligent acts" -- pg. 9, "negligently intefere" -- pg. 11 "negligent fashion" -- pg. 14, "negligent acts".

Petitioners urge that, as a matter of law, in view of the U.S. vs. Parrott findings of negligence, they are entitled to pursue a claim of negligence under the Tort Claims Act.

In view of the Parrott case findings, see the Appendix A and B, to be reported CCH FSLR _____, the participation of defendants Bliss and Hyman in such fraud and deceit as noted, the petitioners urge that an action for individual damages be allowed against the guilty parties and those who acted in concert with them in such deceit, surely the type of "reckless or worse" conduct held to be culpable in Kelley vs. Dunne, 344 F2d 129.

The underlying decision was under Rule 56, where certain immunizing principles do not apply

to attorneys, see Moore's Federal Practice, Vol. 6, 2nd Ed., Affidavits in Bad Faith, Rule 56(g):

(page 2353..."Its (United States) attorney,could, however, be guilty of contempt since the clear language of 56(g) so provides and the immunizing principle of soverign immunity ... does not apply to him..." and "While Rule 56(g) provides for imposition of reasonable expenses (including attorney's fees) against only the offending party, his attorney is subject to a statutory liability for excessive costs, see 28 U.S.C. 1927."

In lieu of certiorari, petitioners urge that case No. 9543 be remanded to the district court for further findings of fact consistent with U.S. vs. Parrott.

Lastly petitioners urge that this court delay ruling on this petition for rehearing until the Court receives the indicated writ of certiorari in Holmes vs. U.S. 231 F.S. 971, affirmed 5thCir, No. 22052, 12/13/'65, ___F2d___, CCH FSLR _____, and Holmes vs. Cary, 234 F.S., affirmed 5thCir., No. 22098, ____F.2d____, CCH SLR _____, both expect to reach writ for certiorari in 60 days unless 5th Circuit rehearing granted.

Petitioners believe the summary opinions in these two cases do not adequately deal with the dozens of constitutional questions that may be raised by the hundreds of undisputed facts set forth in the hundreds of pages of reproduced records in these cases.

Petitioners urge that these two later cases, and the many issues raised in the lengthy complaints, dozens of pages of exhibits and affidavits be considered before ruling on this petition, in view of the U.S. claim this decision res judicata for Holmes vs. U.S., CA 5, or for the matter any litigation the petitioners have ever brought, and the same litigants being involved.

Petitioners urge that these three cases be considered together and that petitioners truly believe that these three cases reveal a vast pattern of governmental interference with their constitutional rights, as well as misguided conduct on the part of the U.S. Securities and Exchange Commission.

Respectfully submitted,

John V. Holmes, pro se
Durward E. Willis, pro se
Solo Tire Company
Hydramotive Corporation
Hydramotive Manufacturing Corp.
Hydramotive Engineering Corp.
American Uranium Company
Science Investors, Inc.
Data Electronics, Inc.
Hydramotive Financial Corp.
Willis Acceptance Corporation

January 28, 1966

Address for Petitioners:

Love Valley
North Carolina 28677

Certificate of Petitioner:

I, John V. Holmes, petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

John V. Holmes, Petitioner, pro se

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF OKLAHOMA

Civil Case File Number 9528

Securities and Exchange Commission Plaintiff vs. Bond and Share Corporation, et al Defendants.	ORDER

Upon Motion and Good Cause Shown,

All drawings, layouts, designs of the Hydramotive automobile are hereby ordered sealed and entrusted to the Clerk of this Court, to be opened only on order of the Court.

FRED DAUGHERTY

United States District Judge

Dated: Mar. 16, 1964

FILED

MAR 16 1964

VERA L. HOWARD

CLERK, U. S. DISTRICT COURT

By ALICE FAYE JOHNSON

DEPUTY

ATTEST: A True copy of the original Order.

VERA L. HOWARD Clerk.

By Alice Faye Johnson

Deputy

Appendix A

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